

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 2.4.403, 2.4.404, 2.4.406,)	AMENDMENT
2.4.410, and 2.4.411 pertaining to the)	
Single Audit Act)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On September 8, 2011, the Department of Administration proposes to amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 18, 2011, to advise us of the nature of the accommodation that you need. Please contact Kay Gray, Local Government Services Bureau, 301 South Park Avenue – Room 340, P.O. Box 200547, Helena, Montana 59620-0547; telephone (406) 841-2903; Montana Relay Service 711; facsimile (406) 841-2910; or e-mail to kaygray@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.4.403 PENALTIES FOR FAILING TO FILE ANNUAL FINANCIAL REPORTS WITHIN PRESCRIBED TIME WITHOUT APPROVED EXTENSION

(1) As provided by 2-7-517, MCA, if a local government entity, ~~other than a school district or associated cooperative,~~ is unable to file its annual financial reports with the department ~~within six months of the end of the local government entity's fiscal year~~ as required by 2-7-503, MCA, the department may grant an extension of time in which to file the financial reports or may waive the fines, fees, and other penalties if the local government entity demonstrates ~~to the department~~ that it has good cause for not submitting the reports within the prescribed time or that the failure to comply was the result of circumstances beyond the entity's control.

(a) and (b) remain the same.

(c) The department shall determine, based on the facts of each case, what constitutes circumstances beyond the entity's control. Examples of circumstances beyond an entity's control may include, but are not limited to, unexpected loss of key accounting staff, loss or inaccessibility of accounting records due to computer malfunction, or natural disaster.

(2) ~~If a local government entity has failed to file its annual financial report with the department within six months of the end of the local government entity's fiscal year, and if the department has not granted an extension of time in which to file the financial report, the department may issue an order to all state agencies requiring~~

~~each agency to withhold payment of any state financial assistance to the local government entity pending receipt of the local government entity's annual financial report.~~

~~(3) Upon receipt of the required annual financial report, the department will notify each state agency that any financial assistance withheld pursuant to the department's order is to be released to the local government entity.~~

(2) If a local government entity has not filed the reports within 180 days of the required dates and the department has not granted an extension for filing the reports, the department shall notify the entity of the fine due and shall provide public notice of the delinquent reports.

(a) Public notice means publishing in the local newspaper, if available, and posting on the department's web site.

(b) Based on the cost of providing public notice, the department shall charge a delinquent filing fee of \$50 for reports not filed within 180 days of the required due dates.

AUTH: 2-7-517, MCA

IMP: 2-7-503, 2-7-517, MCA

STATEMENT OF REASONABLE NECESSITY: The amendments to ARM 2.4.403 are proposed to comply with SB 420 passed by the 2011 Legislature. SB 420 addresses penalties for delinquent filing of required audits and reports by a local government entity to the department; requires the department to adopt rules establishing a fine; and allows the department to waive the penalties under certain circumstances. Specifically, the bill provides that the fine not exceed \$100, based on the cost of providing public notice informing the public that a local government entity failed to timely file required audits and reports. The bill also allows the department to extend the deadlines for filing audits and reports and to waive fines, fees, and other penalties if the entity shows good cause for the delinquency or demonstrates that the failure was the result of circumstances beyond the entity's control.

The amended rule first clarifies how "circumstances beyond the entity's control" will be determined by the department. Since there may be many reasons why a local government fails to file reports, determining what are circumstances beyond the entity's control must necessarily be done based on the facts of each case. However, the department believes that including several examples of such circumstances will provide some clarity for local governments. Not providing any examples would leave these entities in the dark regarding this exception. This situation would not serve the entity's or the department's interests or the public interest.

The amendment also clarifies that "public notice" includes publishing in the local newspaper and posting on the department's web site. The department believes that because most residents have access to the local newspaper, newspaper notice is an appropriate conduit for providing the notice. However, for those people who do not have this access or rely on their computers to obtain

information, posting on the web site is a cost-effective way of providing public notice that helps ensure more widespread public access to the information.

The fee amount of \$50 was calculated based on the estimated cost of publishing a notice in a local newspaper as outlined in ARM 2.67.303. This rule gives authority to the Board of County Printing to establish rates for legal advertising. The department cannot determine how many local governments will be required to pay the fee because it is unknown how many will not file the required reports within 180 days of the required due dates.

Finally, based on the required biennial rule review, portions of ARM 2.4.403(1) and all of (2) and (3) have been deleted because they unnecessarily repeat statute, which is prohibited by 2-4-305(2), MCA.

2.4.404 PENALTY FOR FAILING TO PAY FILING FEE WITHIN 60 DAYS OF DUE DATE ~~(1) As provided by 2-7-514, MCA, local government entities required to submit an annual financial report to the department must pay to the department, at the time the report is submitted, a filing fee as prescribed by ARM 2.4.402.~~

(2) remains the same, but is renumbered (1).

~~(2) (3)~~ If the required filing fee is not submitted to the department within 60 days of ~~receipt~~ the due date of the annual report, the department may add to the filing fee a late payment penalty equal to 10% of the required filing fee for each month or portion of a month that the filing fee is delinquent in excess of 60 days.

(4) and (5) remain the same, but are renumbered (3) and (4).

AUTH: ~~2-7-504~~, 2-7-514, 2-7-517, MCA

IMP: ~~2-7-504~~, 2-7-514, 2-7-517, MCA

STATEMENT OF REASONABLE NECESSITY: The change in the wording of ARM 2.4.404(3) for failure to pay the filing fee penalty is to clarify that the penalty will be calculated, as the title of the rule states, from the due date of the annual financial report not the receipt of the report. There are times when a report is never submitted or submitted well past the due date. The penalty can be more consistently and fairly applied if it is calculated from the due date rather than the submission date.

Based on the required biennial rule review, ARM 2.4.404(1) is deleted because it unnecessarily repeats ARM 2.4.402. Section 2-7-504, MCA, has been deleted as an authority and implemented statute because it was incorrect, and 2-7-514, MCA, has been added as the correct citation.

2.4.406 ROSTER OF INDEPENDENT AUDITORS AUTHORIZED TO CONDUCT AUDITS OF LOCAL GOVERNMENT ENTITIES (1) through (5)(c) remain the same.

(d) have an external quality control review at least once every three years that meets the requirements specified in Government Auditing Standards, as

established by the Comptroller General of the United States, and receive an unqualified review report a peer review rating of "pass" or "pass with deficiencies" from the reviewing firm, team, or association;

(e) through (12) remain the same.

~~(13) Upon termination of a contract for a local government entity audit, if the local government entity fails to present a signed contract to the department for approval with the 90-day period in (12), the department will designate an independent auditor to perform the audit as provided by 2-7-506, MCA.~~

AUTH: 2-7-504, 2-7-506, MCA

IMP: 2-7-504, 2-7-506, MCA

STATEMENT OF REASONABLE NECESSITY: The terminology in ARM 2.4.406(5)(d) regarding external quality control reviews for auditors is changed to conform with wording changes in current accounting standards. The standards now use the terms "pass" or "pass with deficiencies" instead of "unqualified" when denoting a clean opinion. Utilizing terminology consistent with the standards, rather than the department crafting its own terminology, is less confusing for auditors who need to comply with the rules for inclusion on the auditor roster.

Based on the required biennial rule review, ARM 2.4.406(13) is deleted because it unnecessarily repeats statute, which is prohibited by 2-4-305(2), MCA.

2.4.410 REVIEW OF FINANCIAL STATEMENTS (1) through (11) remain the same.

AUTH: ~~2-7-503~~, 2-7-504, MCA

IMP: ~~2-7-503~~, 2-7-504, MCA

STATEMENT OF REASONABLE NECESSITY: Based on the required biennial rule review, ARM 2.4.410 has been changed to eliminate the authority citation 2-7-503, MCA, because there is no specific rulemaking authority in 2-7-503, MCA.

2.4.411 INCORPORATION BY REFERENCE OF VARIOUS STANDARDS, ACCOUNTING POLICIES, AND FEDERAL LAWS AND REGULATIONS

(1) through (4)(a)(xiv) remain the same.

(b) The Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 is codified as Chapter 75 of Title 31 of the United States Code. The code is available at many public libraries and at law offices, and can be accessed at the following web site address: http://www.access.gpo.gov/uscode/title31/subtitlev_chapter75_.html <http://www.gpoaccess.gov/uscode/>.

(c) The circular is available from the federal Office of Management and Budget. A hard copy can be obtained by calling (202) 395-3080. It can also be accessed at the following web site address: <http://www.whitehouse.gov/omb/circulars/a133/a133.html> http://whitehouse.gov/omb/circulars_default/.

(5) through (5)(b) remain the same.

AUTH: 2-7-503, 2-7-504, 2-7-505, 2-7-506, MCA
IMP: 2-7-503, 2-7-504, 2-7-505, 2-7-506, MCA

STATEMENT OF REASONABLE NECESSITY: Based on the required biennial rule review, ARM 2.4.411 has been changed to provide updated web site addresses for accessing the United States Code and the federal Office of Management and Budget. The authority citation 2-7-503, MCA, has been eliminated because there is no specific rulemaking authority in 2-7-503, MCA.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Kay Gray, Bureau Chief, Local Government Services Bureau, P.O. Box 200547, Helena, Montana 59620-0547; faxed to the office at (406) 841-2910; e-mailed to kaygray@mt.gov; and must be received no later than 5:00 p.m., August 25, 2011.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above at the above address no later than 5:00 p.m., August 25, 2011.

6. If the Local Government Services Bureau receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 130 local governments based on the number of Montana local governments.

7. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Local Government Services Bureau maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this bureau. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices

regarding bureau rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Kay Gray, Local Government Services Bureau, 301 South Park Avenue – Room 340, P.O. Box 200547, Helena, Montana 59620-0547; faxed to the office at (406) 841-2910; e-mailed to kaygray@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Steven Gallus, was contacted by mail on June 28, 2011.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State July 18, 2011.